IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO.1824 OF 2000

Shri Anil Deshmukh : Petitioner

versus

The State of Maharashtra

and Anr. : Respondents.

Mr.D.A.Nalawade for the petitioner.
Ms.Rajeshree Gadhavi, APP, for State.
None for Respondent No.2.

CORAM : V.M.KANADE, J.

DATED : 30th January 2006.

ORAL ORDER

1. Heard learned counsel appearing on behalf of the petitioner and learned APP for Respondent No.1/State. None appears for Respondent No.2 though he is served. On the last occasion also when the matter was called out, none appeared on behalf of Respondent No.2. The matter was,

therefore, fixed for final argument today. Even today, neither Respondent No.2, nor his counsel are present in the Court when the matter was called out.

2. The petitioner is challenging an order of issuance of process passed by Metropolitan Magistrate on a complaint, which is lodged by Respondent No.2 for the offence punishable under Section 342 of the Indian Penal Code, on the ground that even if the averments, which are made in the complaint, are taken on its face value, no case, as alleged in the complaint, is made out and, secondly on the ground that the Magistrate could not have taken cognizance of the offence in view of the specific bar which is imposed under Section 197 of the Cr.P.C.

3. The brief facts, which are relevant for the purpose of present application, are as under:-

. The petitioner, at the relevant time, was the Minister of State and was given portfolio inter-alia of Education and, accordingly, was overall in charge of entire process of

examination and all other matters in respect of educational field. An interview given by the petitioner to a daily known as "Mid-Day" to the effect that a complaint has been received against the coaching classes which were being run by Respondent No.2 and that one girl had made the complaint to that effect.

4. Taking exception to the aforesaid Article, Respondent No.2, on the alleged date of incident, barged into the antechamber of the petitioner without taking appointment and hurled the news paper on his face and at that time the student who secured the first rank in 12th examination, was also present along with his parents. It is alleged that the petitioner tried to ask the said student and, therefore, took him in his antechamber so as to verify the allegations which were made against Respondent No.2. At that time Respondent No.2 abused the petitioner herein and, therefore, he had to be detained in order to prevent further injury being caused to the petitioner by the police officers who were on duty of protecting the petitioner. Though the complaint was lodged under various sections, the Magistrate issued process only

under Section 342 of the Indian Penal Code.

5. The learned counsel appearing on behalf of the petitioner relied upon two judgments of the Supreme Court reported in the case of **R.Balakrishna Pillai v/s. State of Kerala and anr. [(1996) 1 SCC 478]** and in the case of **Gauri Shankar Prasad v/s. State of Bihar and anr. [(200) 5 SCC 15]**. He submitted that in the present case the Minister was in his chamber and was, therefore, a public servant discharging his duties and was entitled to get protection under section 197 of the Cr.P.C. He further submitted that even otherwise the averments of the complaint, which are made in the complaint, are taken on its face value, it cannot be said that the complainant was wrongfully confined by the petitioner herein.

6. A perusal of two judgments, on which reliance was placed by the learned counsel appearing on behalf of the petitioner, clearly disclose that the ratios in the said judgments are squarely applicable to the facts of the present case. The petitioner herein admittedly

was the Minister of State of Maharashtra and he was in his chamber when the complainant barged inside his chamber as is also clear from the averments made in the complaint and as such was perfectly within his rights of calling for the security persons and restraining the complaint from acting in an unlawful manner without his permission in his chamber. The petitioner is, therefore, in my opinion, was a public servant within the meaning of section 21 of the Indian Penal Code and was entitled to get protection as provided under Section 197 of the Cr.P.C. The learned Magistrate, therefore, in my view, had clearly erred in issuing process and had failed to take into consideration the provisions of Section 197(1) of the Cr.P.C.

7. It has been decided in a catena of cases by the Supreme Court and by this Court that if a public servant commits an act which is not supposed to be done during the discharge of his duty such as accepting a bribe or illegal gratification and commission of any other offence such as causing grievous hurt or injury, the protection under Section 197 is not available to such a public servant. However, in a case where

public servant acts in the discharge of his public duty, the power which is provided under Section 197 is clearly applicable and, the Magistrate cannot take cognizance unless sanction is obtained by the complainant.

8. Apart from that, even otherwise also it can be seen that the petitioner cannot be said to have put the complaint under wrongful confinement as the complainant had entered in the chamber of the petitioner without his consent and, therefore, had to be legally restrained by the persons who are authorised to give security to the petitioner. Thus, both the submissions made by the learned counsel appearing on behalf of the petitioner will have to be accepted. In the result, the process issued by the Metropolitan Magistrate, 8th Court Esplanade, Mumbai in Criminal Case No.3/S of 2000 is quashed and set aside. Petition is made absolute in terms of prayer clause (a). Rule is made absolute.

[V.M.KANADE,J]